

AMENDED IN ASSEMBLY MARCH 17, 2016

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

**ASSEMBLY BILL**

**No. 2591**

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**Introduced by Assembly Member Dababneh**

February 19, 2016

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*An act to amend Section 1633.3 of the Civil Code, and to amend Section 38.6 of the Insurance Code, relating to insurance.*

LEGISLATIVE COUNSEL’S DIGEST

AB 2591, as amended, Dababneh. Insurance: electronic transmission.

*Existing law generally requires, with exceptions, that specified provisions of the Civil Code apply to electronic records and electronic signatures relating to a transaction.*

*This bill would remove a policy cancellation notice by the named insured from the above exemptions.*

Existing law generally requires that any required notice related to insurance transactions be made by mail. Existing law authorizes an insurer, under specified conditions, to provide by electronic transmission the required offer of renewal for automobile insurance, the required offer of renewal or conditional renewal for property insurance, the required offer of coverage or renewal or any disclosure required regarding earthquake insurance, *and* the offer of renewal for a workers’ compensation policy, ~~and life insurance records.~~ *policy.*

~~This bill would state the intent of the Legislature to enact legislation that would expand the authority of an insurer to provide required documents to its consumers through electronic transmission.~~

*The bill would, for the above-specified records, authorize persons in addition to the insurer to send those records by electronic transmission*

*by providing that an agent, broker, or any other person licensed by the Department of Insurance may send those records electronically.*

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1     *SECTION 1. Section 1633.3 of the Civil Code, as amended by*  
2     *Chapter 638 of the Statutes of 2015, is amended to read:*

3     1633.3. (a) Except as otherwise provided in subdivisions (b)  
4     and (c), this title applies to electronic records and electronic  
5     signatures relating to a transaction.

6     (b) This title does not apply to transactions subject to the  
7     following laws:

8     (1) A law governing the creation and execution of wills, codicils,  
9     or testamentary trusts.

10    (2) Division 1 (commencing with Section 1101) of the Uniform  
11    Commercial Code, except Sections 1206 and 1306.

12    (3) Divisions 3 (commencing with Section 3101), 4  
13    (commencing with Section 4101), 5 (commencing with Section  
14    5101), 8 (commencing with Section 8101), 9 (commencing with  
15    Section 9101), and 11 (commencing with Section 11101) of the  
16    Uniform Commercial Code.

17    (4) A law that requires that specifically identifiable text or  
18    disclosures in a record or a portion of a record be separately signed,  
19    including initialed, from the record. However, this paragraph does  
20    not apply to Section 1677 or 1678 of this code or Section 1298 of  
21    the Code of Civil Procedure.

22    (c) This title does not apply to any specific transaction described  
23    in Section 17511.5 of the Business and Professions Code, Section  
24    56.11, 56.17, 798.14, 1133, or 1134 of, Section 1689.6, 1689.7,  
25    or 1689.13 of, Chapter 2.5 (commencing with Section 1695) of  
26    Title 5 of Part 2 of Division 3 of, Section 1720, 1785.15, 1789.14,  
27    1789.16, or 1793.23 of, Chapter 1 (commencing with Section  
28    1801) of Title 2 of Part 4 of Division 3 of, Section 1861.24, 1862.5,  
29    1917.712, 1917.713, 1950.6, 1983, 2924b, 2924c, 2924f, 2924i,  
30    2924j, 2924.3, or 2937 of, Article 1.5 (commencing with Section  
31    2945) of Chapter 2 of Title 14 of Part 4 of Division 3 of, Section  
32    2954.5 or 2963 of, Chapter 2b (commencing with Section 2981)  
33    or 2d (commencing with Section 2985.7) of Title 14 of Part 4 of

Division 3 of, Section 3071.5 of, Part 5 (commencing with Section 4000) of Division 4 of, or Part 5.3 (commencing with Section 6500) of Division 4 of this code, subdivision (b) of Section 18608 or Section 22328 of the Financial Code, Section 1358.15, 1365, 1368.01, 1368.1, 1371, or 18035.5 of the Health and Safety Code, Section 662, paragraph (2) of subdivision (a) of Section 663, 664, ~~667.5~~, 673, 677, paragraph (2) of subdivision (a) of Section 678, subdivisions (a) and (b) of Section 678.1, Section 786 as it applies to individual and group disability policies, Section 10192.18, 10199.44, 10199.46, 10235.16, 10235.40, 11624.09, or 11624.1 of the Insurance Code, Section 779.1, 10010.1, or 16482 of the Public Utilities Code, or Section 9975 or 11738 of the Vehicle Code. An electronic record may not be substituted for any notice that is required to be sent pursuant to Section 1162 of the Code of Civil Procedure. Nothing in this subdivision shall be construed to prohibit the recordation of any document with a county recorder by electronic means.

(d) This title applies to an electronic record or electronic signature otherwise excluded from the application of this title under subdivision (b) when used for a transaction subject to a law other than those specified in subdivision (b).

(e) A transaction subject to this title is also subject to other applicable substantive law.

(f) The exclusion of a transaction from the application of this title under subdivision (b) or (c) shall be construed only to exclude the transaction from the application of this title, but shall not be construed to prohibit the transaction from being conducted by electronic means if the transaction may be conducted by electronic means under any other applicable law.

(g) Notwithstanding subdivisions (b) and (c), this title shall apply to electronic records and electronic signatures relating to transactions conducted by a person licensed, certified, or registered pursuant to the Alarm Company Act (Chapter 11.6 (commencing with Section 7590) of Division 3 of the Business and Professions Code) for purposes of activities authorized by Section 7599.54 of the Business and Professions Code.

(h) This section shall remain in effect only until January 1, 2019, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2019, deletes or extends that date.

1     *SEC. 2. Section 1633.3 of the Civil Code, as amended by*  
2     *Chapter 638 of the Statutes of 2015, is amended to read:*

3     1633.3. (a) Except as otherwise provided in subdivisions (b)  
4     and (c), this title applies to electronic records and electronic  
5     signatures relating to a transaction.

6     (b) This title does not apply to transactions subject to the  
7     following laws:

8     (1) A law governing the creation and execution of wills, codicils,  
9     or testamentary trusts.

10    (2) Division 1 (commencing with Section 1101) of the Uniform  
11    Commercial Code, except Sections 1206 and 1306.

12    (3) Divisions 3 (commencing with Section 3101), 4  
13    (commencing with Section 4101), 5 (commencing with Section  
14    5101), 8 (commencing with Section 8101), 9 (commencing with  
15    Section 9101), and 11 (commencing with Section 11101) of the  
16    Uniform Commercial Code.

17    (4) A law that requires that specifically identifiable text or  
18    disclosures in a record or a portion of a record be separately signed,  
19    including initialed, from the record. However, this paragraph does  
20    not apply to Section 1677 or 1678 of this code or Section 1298 of  
21    the Code of Civil Procedure.

22    (c) This title does not apply to any specific transaction described  
23    in Section 17511.5 of the Business and Professions Code, Section  
24    56.11, 56.17, 798.14, 1133, or 1134 of, Section 1689.6, 1689.7,  
25    or 1689.13 of, Chapter 2.5 (commencing with Section 1695) of  
26    Title 5 of Part 2 of Division 3 of, Section 1720, 1785.15, 1789.14,  
27    1789.16, or 1793.23 of, Chapter 1 (commencing with Section  
28    1801) of Title 2 of Part 4 of Division 3 of, Section 1861.24, 1862.5,  
29    1917.712, 1917.713, 1950.6, 1983, 2924b, 2924c, 2924f, 2924i,  
30    2924j, 2924.3, or 2937 of, Article 1.5 (commencing with Section  
31    2945) of Chapter 2 of Title 14 of Part 4 of Division 3 of, Section  
32    2954.5 or 2963 of, Chapter 2b (commencing with Section 2981)  
33    or 2d (commencing with Section 2985.7) of Title 14 of Part 4 of  
34    Division 3 of, Section 3071.5 of Part 5 (commencing with Section  
35    4000) of Division 4 of, or Part 5.3 (commencing with Section  
36    6500) of Division 4 of this code, subdivision (b) of Section 18608  
37    or Section 22328 of the Financial Code, Section 1358.15, 1365,  
38    1368.01, 1368.1, 1371, or 18035.5 of the Health and Safety Code,  
39    Section 662, 663, 664, ~~667.5~~, 673, 677, 678, 678.1, 786 as it applies  
40    to individual and group disability policies, 10192.18, 10199.44,

1 10199.46, 10235.16, 10235.40, 11624.09, or 11624.1 of the  
2 Insurance Code, Section 779.1, 10010.1, or 16482 of the Public  
3 Utilities Code, or Section 9975 or 11738 of the Vehicle Code. An  
4 electronic record may not be substituted for any notice that is  
5 required to be sent pursuant to Section 1162 of the Code of Civil  
6 Procedure. Nothing in this subdivision shall be construed to  
7 prohibit the recordation of any document with a county recorder  
8 by electronic means.

9 (d) This title applies to an electronic record or electronic  
10 signature otherwise excluded from the application of this title under  
11 subdivision (b) when used for a transaction subject to a law other  
12 than those specified in subdivision (b).

13 (e) A transaction subject to this title is also subject to other  
14 applicable substantive law.

15 (f) The exclusion of a transaction from the application of this  
16 title under subdivision (b) or (c) shall be construed only to exclude  
17 the transaction from the application of this title, but shall not be  
18 construed to prohibit the transaction from being conducted by  
19 electronic means if the transaction may be conducted by electronic  
20 means under any other applicable law.

21 (g) Notwithstanding subdivisions (b) and (c), this title shall  
22 apply to electronic records and electronic signatures relating to  
23 transactions conducted by a person licensed, certified, or registered  
24 pursuant to the Alarm Company Act (Chapter 11.6 (commencing  
25 with Section 7590) of Division 3 of the Business and Professions  
26 Code) for purposes of activities authorized by Section 7599.54 of  
27 the Business and Professions Code.

28 (h) This section shall become operative on January 1, 2019.

29 (i) This section shall remain in effect only until January 1, 2021,  
30 and as of that date is repealed, unless a later enacted statute, that  
31 is enacted before January 1, 2021, deletes or extends that date.

32 *SEC. 3. Section 1633.3 of the Civil Code, as added by Chapter*  
33 *638 of the Statutes of 2015, is amended to read:*

34 1633.3. (a) Except as otherwise provided in subdivisions (b)  
35 and (c), this title applies to electronic records and electronic  
36 signatures relating to a transaction.

37 (b) This title does not apply to transactions subject to the  
38 following laws:

39 (1) A law governing the creation and execution of wills, codicils,  
40 or testamentary trusts.

(2) Division 1 (commencing with Section 1101) of the Uniform Commercial Code, except Sections 1206 and 1306.

(3) Divisions 3 (commencing with Section 3101), 4 (commencing with Section 4101), 5 (commencing with Section 5101), 8 (commencing with Section 8101), 9 (commencing with Section 9101), and 11 (commencing with Section 11101) of the Uniform Commercial Code.

(4) A law that requires that specifically identifiable text or disclosures in a record or a portion of a record be separately signed, including initialed, from the record. However, this paragraph does not apply to Section 1677 or 1678 of this code or Section 1298 of the Code of Civil Procedure.

(c) This title does not apply to any specific transaction described in Section 17511.5 of the Business and Professions Code, Section 56.11, 56.17, 798.14, 1133, or 1134 of, Section 1689.6, 1689.7, or 1689.13 of, Chapter 2.5 (commencing with Section 1695) of Title 5 of Part 2 of Division 3 of, Section 1720, 1785.15, 1789.14, 1789.16, or 1793.23 of, Chapter 1 (commencing with Section 1801) of Title 2 of Part 4 of Division 3 of, Section 1861.24, 1862.5, 1917.712, 1917.713, 1950.6, 1983, 2924b, 2924c, 2924f, 2924i, 2924j, 2924.3, or 2937 of, Article 1.5 (commencing with Section 2945) of Chapter 2 of Title 14 of Part 4 of Division 3 of, Section 2954.5 or 2963 of, Chapter 2b (commencing with Section 2981) or 2d (commencing with Section 2985.7) of Title 14 of Part 4 of Division 3 of, Section 3071.5 of Part 5 (commencing with Section 4000) of Division 4 of, or Part 5.3 (commencing with Section 6500) of Division 4 of this code, subdivision (b) of Section 18608 or Section 22328 of the Financial Code, Section 1358.15, 1365, 1368.01, 1368.1, 1371, or 18035.5 of the Health and Safety Code, Section 662, 663, 664, ~~667.5~~, 673, 677, 678, 678.1, 786, 10086, 10113.7, 10127.7, 10127.9, 10127.10, 10192.18, 10199.44, 10199.46, 10235.16, 10235.40, 10509.4, 10509.7, 11624.09, or 11624.1 of the Insurance Code, Section 779.1, 10010.1, or 16482 of the Public Utilities Code, or Section 9975 or 11738 of the Vehicle Code. An electronic record may not be substituted for any notice that is required to be sent pursuant to Section 1162 of the Code of Civil Procedure. Nothing in this subdivision shall be construed to prohibit the recordation of any document with a county recorder by electronic means.

1 (d) This title applies to an electronic record or electronic  
2 signature otherwise excluded from the application of this title under  
3 subdivision (b) when used for a transaction subject to a law other  
4 than those specified in subdivision (b).

5 (e) A transaction subject to this title is also subject to other  
6 applicable substantive law.

7 (f) The exclusion of a transaction from the application of this  
8 title under subdivision (b) or (c) shall be construed only to exclude  
9 the transaction from the application of this title, but shall not be  
10 construed to prohibit the transaction from being conducted by  
11 electronic means if the transaction may be conducted by electronic  
12 means under any other applicable law.

13 (g) Notwithstanding subdivisions (b) and (c), this title shall  
14 apply to electronic records and electronic signatures relating to  
15 transactions conducted by a person licensed, certified, or registered  
16 pursuant to the Alarm Company Act (Chapter 11.6 (commencing  
17 with Section 7590) of Division 3 of the Business and Professions  
18 Code) for purposes of activities authorized by Section 7599.54 of  
19 the Business and Professions Code.

20 (h) This section shall become operative on January 1, 2021.

21 *SEC. 4. Section 38.6 of the Insurance Code is amended to read:*

22 38.6. (a) (1) Any written record required to be given or mailed  
23 to any person by a ~~licensee~~ *licensee, including an offer of renewal*  
24 *required by Sections 663 and 678, the notice of policy change or*  
25 *cancellation requested by the insured as required by Section 667.5,*  
26 *the notice of conditional renewal required by Section 678.1, the*  
27 *offer of coverage or renewal or any disclosure required by Section*  
28 *10086, the offer of renewal for a workers' compensation policy,*  
29 *or any written record required to be given or mailed to any person*  
30 *by a licensee* relating to the business of life insurance, as defined  
31 in Section 101 of this code may, if not excluded by subdivision  
32 (b) or (c) of Section 1633.3 of the Civil Code, be provided by  
33 electronic transmission pursuant to Title 2.5 (commencing with  
34 Section 1633.1) of Part 2 of Division 3 of the Civil Code, if each  
35 party has agreed to conduct the transaction by electronic means  
36 pursuant to Section 1633.5 of the Civil Code, and if the licensee  
37 complies with the provisions of this section. A valid electronic  
38 signature shall be sufficient for any provision of law requiring a  
39 written signature.

(2) For purposes of this section, the definitions set forth in Section 1633.2 of the Civil Code shall apply. The term “licensee” means an insurer, agent, broker, or any other person who is required to be licensed by the department.

(3) Notwithstanding subdivision (l) of Section 1633.2 of the Civil Code, for purposes of this section, “person” includes, but is not limited to, the policy owner, policyholder, applicant, insured, or assignee or designee of an insured.

~~(b) In order to transmit a life insurance record electronically,~~  
*record listed in subdivision (a) electronically,* a licensee shall comply with all of the following:

(1) A licensee, or licensee’s representative, acquires the consent of the person to opt in to receive the record by electronic transmission, and the person has not withdrawn that consent, prior to providing the record by electronic transmission. A person’s consent may be acquired verbally, in writing, or electronically. If consent is acquired verbally, the licensee shall confirm consent in writing or electronically. The licensee shall retain a record of the person’s consent to receive the record by electronic transmission with the policy information so that it is retrievable upon request by the department while the policy is in force and for five years thereafter.

(2) A licensee discloses, in writing or electronically, to the person all of the following:

(A) The opt in to receive the record by electronic transmission is voluntary.

(B) That the person may opt out of receiving the record by electronic transmission at any time, and the process or system for the person to opt out.

(C) A description of the record that the person will receive by electronic transmission.

(D) The process or system to report a change or correction in the person’s email address.

(E) The licensee’s contact information, which includes, but is not limited to, a toll-free number or the licensee’s Internet Web site address.

(3) The opt-in consent disclosure required by paragraph (2) may be set forth in the application or in a separate document that is part of the policy approved by the commissioner and shall be bolded or otherwise set forth in a conspicuous manner. The person’s



1 signature shall be set forth immediately below the opt-in consent  
2 disclosure. If the licensee seeks consent at any time prior to the  
3 completion of the application, consent and signature shall be  
4 obtained before the application is completed. If the person has not  
5 opted in at the time the application is completed, the licensee may  
6 receive the opt-in consent at any time thereafter, pursuant to the  
7 same opt in requirements that apply at the time of the application.  
8 The licensee shall retain a copy of the signed opt-in consent  
9 disclosure with the policy information so that each is retrievable  
10 upon request by the department while the policy is in force and  
11 for five years thereafter.

12 (4) The email address of the person who has consented to  
13 electronic transmission shall be set forth on the consent disclosure.  
14 In addition, if the person who consented receives an annual  
15 statement, the email address of the person who has consented shall  
16 be set forth on that record.

17 (5) The licensee shall annually provide one free printed copy  
18 of any record described in this subdivision upon request by the  
19 person.

20 (6) If a provision of this code requires a licensee to transmit a  
21 record by first class mail, regular mail, does not specify a method  
22 of delivery, or is a record that is required to be provided pursuant  
23 to Article 6.6 (commencing with Section 791), and if the licensee  
24 is not otherwise prohibited from transmitting the record  
25 electronically under subdivision (b) of Section 1633.8 of the Civil  
26 Code, then the record may be transmitted by electronic transmission  
27 if the licensee complies with all of the requirements of Sections  
28 1633.15 and 1633.16 of the Civil Code.

29 (7) Notwithstanding subdivision (b) of Section 1633.8 of the  
30 Civil Code, if a provision of this code requires a licensee to  
31 transmit a record by return receipt, registered mail, certified mail,  
32 signed written receipt of delivery, or other method of delivery  
33 evidencing actual receipt by the person, and if the licensee is not  
34 otherwise prohibited from transmitting the record electronically  
35 under Section 1633.3 of the Civil Code and the provisions of this  
36 section, then the licensee shall maintain a process or system that  
37 demonstrates proof of delivery and actual receipt of the record by  
38 the person consistent with this paragraph. The licensee shall  
39 document and retain information demonstrating delivery and actual  
40 receipt so that it is retrievable, upon request, by the department at

1 least five years after the policy is no longer in force. The record  
2 provided by electronic transmission shall be treated as if actually  
3 received if the licensee delivers the record to the person in  
4 compliance with applicable statutory delivery deadlines. A licensee  
5 may demonstrate actual delivery and receipt by any of the  
6 following:

7 (A) The person acknowledges receipt of the electronic  
8 transmission of the record by returning an electronic receipt or by  
9 executing an electronic signature.

10 (B) The record is made part of, or attached to, an email sent to  
11 the email address designated by the person, and there is a  
12 confirmation receipt, or some other evidence that the person  
13 received the email in his or her email account and opened the  
14 email.

15 (C) The record is posted on the licensee's secure Internet Web  
16 site, and there is evidence demonstrating that the person logged  
17 onto the licensee's secure Internet Web site and downloaded,  
18 printed, or otherwise acknowledged receipt of the record.

19 (D) If a licensee is unable to demonstrate actual delivery and  
20 receipt pursuant to this paragraph, the licensee shall resend the  
21 record by regular mail to the person in the manner originally  
22 specified by the underlying provision of this code.

23 (8) Notwithstanding any other law, a notice of lapse,  
24 nonrenewal, cancellation, or termination of any product subject to  
25 this section may be transmitted electronically if the licensee  
26 demonstrates proof of delivery as set forth in paragraph (7) and  
27 complies with the other provisions in this section.

28 (9) If the record is not delivered directly to the electronic address  
29 designated by the person but placed at an electronic address  
30 accessible to the person, a licensee shall notify the person in plain,  
31 clear, and conspicuous language at the electronic address  
32 designated by the person that describes the record, informs that  
33 person that it is available at another location, and provides  
34 instructions to the person as to how to obtain the record.

35 (10) (A) Upon a licensee receiving information indicating that  
36 the record sent by electronic transmission was not received by the  
37 person, the licensee shall, within five business days, comply with  
38 either clause (i) or (ii):

39 (i) Contact the person to confirm or update the person's email  
40 address and resend the record by electronic transmission. If the

1 licensee elects to resend the record by electronic transmission, the  
2 licensee shall demonstrate the transmission was received by the  
3 person, pursuant to paragraph (6), (7), or (8). If the licensee is  
4 unable to confirm or update the person's email address, the licensee  
5 shall resend the record by regular mail to the licensee at the address  
6 shown on the policy, or, if the underlying statute requires delivery  
7 in a specified manner, send the record in that specified manner.

8 (ii) Resend the record initially provided by electronic  
9 transmission by regular mail to the insured at the address shown  
10 on the policy, or, if the underlying statute requires delivery in a  
11 specified manner, send the record in that specified manner.

12 (B) If the licensee sends the first electronic record within the  
13 time period required by law and the licensee complies with both  
14 paragraph (5) and subparagraph (A) of this paragraph, the record  
15 sent pursuant to clause (i) or (ii) of subparagraph (A) shall be  
16 treated as if mailed in compliance with the applicable statutory  
17 regular mail delivery deadlines.

18 (11) The licensee shall not charge any person who declines to  
19 opt in to receive a record through electronic transmission from  
20 receiving a record electronically. The licensee shall not provide a  
21 discount or an incentive to any person to opt in to receive electronic  
22 records.

23 (12) The licensee shall verify a person's email address via paper  
24 writing sent by regular mail when more than 12 months have  
25 elapsed since the license's last electronic communication.

26 (c) An insurance agent or broker acting under the direction of  
27 a party that enters into a contract by means of an electronic record  
28 or electronic signature shall not be held liable for any deficiency  
29 in the electronic procedures agreed to by the parties under that  
30 contract if all of the following are met:

31 (1) The insurance agent or broker has not engaged in negligent,  
32 reckless, or intentional tortious conduct.

33 (2) The insurance agent or broker was not involved in the  
34 development or establishment of the electronic procedures.

35 (3) The insurance agent or broker did not deviate from the  
36 electronic procedures.

37 (d) On or before January 1, 2020, the commissioner shall submit  
38 a report to the Governor and to the committees of the Senate and  
39 Assembly having jurisdiction over insurance and the judiciary,  
40 regarding the impact and implementation of the authorization of

1 the electronic transmission of certain insurance renewal offers,  
2 notices, or disclosures as authorized by this section. The report  
3 shall include input from insurers, consumers, and consumer  
4 organizations, and shall include an assessment of the department's  
5 experience pertaining to the authorization of the electronic  
6 transmission of insurance renewals as authorized by this section.

7 (e) Notwithstanding paragraph (4) of subdivision (b) of Section  
8 1633.3 of the Civil Code, for any policy of life insurance, as  
9 defined in Section 101, any statutory requirement for a separate  
10 acknowledgment, signature, or initial, which is not expressly  
11 prohibited by subdivision (c) of Section 1633.3 of the Civil Code,  
12 may be transacted using an electronic signature, or by electronic  
13 transaction, subject to all applicable provisions of this section.

14 (f) The department may suspend a licensee from providing  
15 records by electronic transmission if there is a pattern or practices  
16 that demonstrate the licensee has failed to comply with the  
17 requirements of this section. A licensee may appeal the suspension  
18 and resume its electronic transmission of records upon  
19 communication from the department that the changes the licensee  
20 made to its process or system to comply with the requirements of  
21 this section are satisfactory.

22 (g) This section shall remain in effect only until January 1, 2021,  
23 and as of that date is repealed, unless a later enacted statute, that  
24 is enacted before January 1, 2021, deletes or extends that date.

25 ~~SECTION 1. It is the intent of the Legislature to enact~~  
26 ~~legislation that would expand the authority of an insurer to provide~~  
27 ~~required documents to its consumers through electronic~~  
28 ~~transmission.~~